

I hereby certify that this correspondence is being filed via
EFS-Web with the United States Patent and Trademark Office
on May 1, 2009

PATENT
Docket No.: 020891-001411US

TOWNSEND and TOWNSEND and CREW LLP

By: 

Lukas K. Szumanski

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Roland W. BURLI

Patent No.: 7,498,349

Issued: March 3, 2009

Application No.: 10/523,422

Filed: October 6, 2005

For: Biaryl Compounds Having Anti-
Infective Activity

Customer No.: 20350

Confirmation No.: 1167

Examiner: Nolan, Jason Michael

Art Unit: 1626

**REQUEST FOR
RECONSIDERATION OF PATENT
TERM ADJUSTMENT
DETERMINATION
UNDER 37 C.F.R. § 1.705(d)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Commissioner:

Pursuant to 37 C.F.R. § 1.705(d), Applicants respectfully request reconsideration of the patent term adjustment determination. This request is accompanied by the fee set forth in §1.18(e) and a statement of facts as required under 37 C.F.R. § 1.705(b)(2).

In view of the following it is respectfully requested that Applicants be granted a corrected patent term adjustment of 492 days.

Statement of Facts as required under 37 C.F.R. § 1.705(b)(2)

The correct patent term adjustment is 492 days, not 344 days as stated on the Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) mailed on September 17, 2008 with the Notice of Allowance and listed on the front page of U.S. Patent No. 7,498,349.

The period of adjustment under § 1.702(a) is 404 days (“A delay”).

The period of adjustment under § 1.702(b) is 148 days (“B delay”).

The period adjustment under § 1.704(a) is 60 days (“applicant delay”).

The period of adjustment under § 1.703(f) is 492 days.

The Relevant Dates as Specified in 37 C.F.R. §§ 1.703(a)-(e) and the Adjustment Specified in 37 C.F.R. § 1.703(f)

1. § 1.703(a)

Applicants submit that the Office did correctly calculate the term adjustments to include the term adjustments that Applicants are entitled to under 37 CFR § 1.703(a)(1) as 404 days (See **Exhibit A**, attached hereto).

The relevant dates are shown below.

Filing Date	14-month Date	Date of 1 st Office Action	Days over 14 months (§ 1.703(a)(1))
October 6, 2005	December 6, 2006	June 27, 2007	404 days

2. § 1.703(b)

The Office failed to issue a patent within three years of the actual filing date of the above-referenced application. The period of adjustment under 37 C.F.R. § 1.702(b) begins on the day after the date that is three years from the filing date of the instant application, October 6, 2008, and ends on March 3, 2009, the day the above-identified U.S. Patent was issued.

Thus, the effective period of adjustment under 37 C.F.R. § 1.702(b) is 148 days as shown in the table below.

Filing Date	3-year Date	Date Patent Issued	Days over 3 years through Issuance (§ 1.703(b)(1))
October 6, 2005	October 6, 2008	March 3, 2009	148 days

3. § 1.703(c)-(e)

There are no relevant dates as specified under §§ 1.703(c)-(e)

4. Overlapping periods under § 1.703(a)-(e)

Applicants have calculated overlapping periods in accordance with *Wyeth v. Dudas* (88 U.S.P.Q.2d 1538, D.D.C. 2008). Periods of delay under 35 U.S.C. §154(b)(1)(A) and 35 U.S.C. §1.54(b)(1)(B) overlap only if they occur on the same calendar day or days (see *Wyeth*).

There are no overlapping periods under § 1.703(a)-(e).

5. § 1.703(f)

The period of adjustment under 37 C.F.R. § 1.702(f) is as follows:

Type "A" delay:	404 days
Type "B" delay:	148 days
"A" and "B" overlap:	0 days
Applicant delay:	60 days
<u>Adjusted</u>	<u>492 days</u>

Reduction of Period of Adjustment of Patent Term Under 37 C.F.R. §1.704

The Office did correctly calculate the period of adjustment under § 1.704(a) as 60 days as indicated by the Patent Term Adjustment History (see **Exhibit A**).

Terminal disclaimer

The instant application is not subject to a terminal disclaimer.

Statement under 37 C.F.R. § 1.705(d)

The issue fee was paid on December 15, 2008 and the U.S. Patent issued on March 3, 2009. This petition is being filed within the two-month time frame set forth under 37 CFR §1.705(d).

Pursuant to 37 CFR §1.705(d), this request for reconsideration could not have been filed prior to or with the December 15, 2008 issue fee payment since Applicants and the U.S. Patent Office are unable to calculate the amount of patent term adjustment accrued under §1.702(b) until the time of issuance of the patent. Further, knowledge of the actual date the patent issues is required to calculate any additional patent term entitled to the Applicants under §1.703(b). Thus, Applicants could not have filed the instant Request for Reconsideration prior to the issuance of the U.S. Patent.

PATENT TERM ADJUSTMENT DETERMINATION

Pursuant to *Wyeth*, Applicants are entitled to 492 days of patent term adjustment, *i.e.*, [552 days (A delay + B delay)] minus [60 days (applicant delay)].

Applicant attaches a copy of the Decision mailed on February 3, 2009 regarding the Request for Reconsideration of Patent Term Adjustment Determination filed December 15, 2008.

Based on the foregoing, Applicants respectfully request reconsideration of the patent term adjustment determination.

In accordance to the received decision dated February 3, 2009, Applicants believe that no additional fee is due since one was submitted on December 15, 2008. Please charge any necessary additional fees or credit any overpayments to our Deposit Order Account No. 20-1430.

Respectfully submitted,



Alexander R. Trimble
Reg. No. 52,301

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: (415) 576-0200
Fax: (415) 576-0300
ART:lks